

AMENDED IN ASSEMBLY MARCH 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 371

Introduced by Assembly Member La Suer

February 14, 2003

An act to amend Section 1246 of the Business and Professions Code, and to amend Section 23158 of the Vehicle Code, relating to blood tests.

LEGISLATIVE COUNSEL'S DIGEST

AB 371, as amended, La Suer. Blood tests.

Under existing law, only specified medical and laboratory personnel may withdraw blood for purposes of testing its alcoholic content at the request of a peace officer. These personnel include unlicensed laboratory personnel regulated under specified existing laws that provide for and determine the required qualifications for a category of ~~certified~~ “*certified phlebotomy technicians*.” In the context of clinical laboratory work, ~~these~~ certified phlebotomy technicians generally may not withdraw blood unless supervised by a physically available physician, surgeon, nurse, or clinical laboratory licensee.

Under existing law, biological monitoring and testing is required under specified occupational circumstances, including blood testing. For blood testing and other medical procedures of this type, some occupational regulations specify that they must be performed by, or under the supervision of, a licensed physician.

This bill would permit *a person who has been issued a ~~certified~~ “certified phlebotomy technician” certificate, or who has training, knowledge, and proficiency in venipuncture sufficient to be an*

“unlicensed person” authorized to perform clinical laboratory phlebotomy, to withdraw blood in any location and without direct supervision, at the direction and in the presence of a peace officer, for alcohol or drug testing in the context of a driving under the influence investigation for forensic purposes regardless of whether the person is employed by a clinical laboratory. ~~It~~ The bill would also permit a certified phlebotomy technician that person to draw blood at the request of an employer, in any location and without direct supervision, for legally mandated occupational monitoring and testing programs regardless of whether the person is employed by a clinical laboratory.

Existing law provides civil and criminal immunity to various medical personnel and businesses from liability for the reasonable, nonviolent administration of a blood test when requested in writing by a peace officer.

This bill would add “agencies” to those parties provided this immunity.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1246 of the Business and Professions
- 2 Code is amended to read:
- 3 1246. (a) Except as provided in ~~subdivision (b)~~ subdivisions
- 4 (b), (c), and (d), and in Section 23158 of the Vehicle Code, an
- 5 unlicensed person employed by a licensed clinical laboratory may
- 6 perform venipuncture or skin puncture for the purpose of
- 7 withdrawing blood or for clinical laboratory test purposes upon
- 8 specific authorization from a licensed physician and surgeon,
- 9 provided that he or she meets both of the following requirements:
- 10 (1) He or she works under the supervision of a person licensed
- 11 under this chapter or of a licensed physician or surgeon or of a
- 12 licensed registered nurse. A person licensed under this chapter, a
- 13 licensed physician or surgeon, or a registered nurse shall be
- 14 physically available to be summoned to the scene of the
- 15 venipuncture within five minutes during the performance of those
- 16 procedures.
- 17 (2) He or she has been trained by a licensed physician and
- 18 surgeon or by a clinical laboratory bioanalyst in the proper
- 19 procedure to be employed when withdrawing blood in accordance

1 with training requirements established by the State Department of
2 Health Services and has a statement signed by the instructing
3 physician and surgeon or by the instructing clinical laboratory
4 bioanalyst that this training has been successfully completed.

5 (b) (1) On and after the effective date of the regulations
6 specified in paragraph (2), any unlicensed person employed by a
7 clinical laboratory performing the duties described in this section
8 shall possess a valid and current certification as a “certified
9 phlebotomy technician” issued by the department. However, an
10 unlicensed person employed by a clinical laboratory to perform
11 these duties pursuant to subdivision (a) on that date shall comply
12 with this requirement within three years after the effective date of
13 those regulations.

14 (2) The department shall adopt regulations for certification by
15 January 1, 2001, as a “certified phlebotomy technician” that shall
16 include all of the following:

17 (A) The applicant shall hold a valid, current certification as a
18 phlebotomist issued by a national accreditation agency approved
19 by the department, and shall submit proof of that certification
20 when applying for certification pursuant to this section.

21 (B) The applicant shall complete education, training, and
22 experience requirements as specified by regulations that shall
23 include, but not be limited to, the following:

24 (i) At least 40 hours of didactic instruction.

25 (ii) At least 40 hours of practical instruction.

26 (iii) At least 50 successful venipunctures.

27 However, an applicant who has been performing these duties
28 pursuant to subdivision (a) may be exempted from the
29 requirements specified in clauses (ii) and (iii), and from 20 hours
30 of the 40 hours of didactic instruction as specified in clause (i), if
31 he or she has at least 1,040 hours of work experience, as specified
32 in regulations adopted by the department.

33 It is the intent of the Legislature to permit persons performing
34 these duties pursuant to subdivision (a) to use educational leave
35 provided by their employers for purposes of meeting the
36 requirements of this section.

37 (3) Each “certified phlebotomy technician” shall complete at
38 least three hours per year or six hours every two years of
39 continuing education or training. The department shall consider a

1 variety of programs in determining the programs that meet the
2 continuing education or training requirement.

3 (4) He or she has been found to be competent in phlebotomy by
4 a licensed physician and surgeon or person licensed pursuant to
5 this chapter.

6 (5) He or she works under the supervision of a licensed
7 physician and surgeon, licensed registered nurse, or person
8 licensed under this chapter, or the designee of a licensed physician
9 and surgeon or the designee of a person licensed under this chapter.

10 (6) The department shall adopt regulations establishing
11 standards for approving training programs designed to prepare
12 applicants for certification pursuant to this section. The standards
13 shall ensure that these programs meet the state's minimum
14 education and training requirements for comparable programs.

15 (7) The department shall adopt regulations establishing
16 standards for approving national accreditation agencies to
17 administer certification examinations and tests pursuant to this
18 section.

19 (8) The department shall charge fees for application for and
20 renewal of the certificate authorized by this section of no more
21 than twenty-five dollars (\$25).

22 (c) Notwithstanding ~~subdivisions (a) and (b), a certified~~
23 ~~phlebotomy technician~~ *any other provision of law, a person who*
24 *has been issued a "certified phlebotomy technician" certificate*
25 *pursuant to this section, or who has training, knowledge, and*
26 *proficiency in venipuncture sufficient to be an "unlicensed*
27 *person" authorized to perform clinical laboratory phlebotomy*
28 *under subdivision (a), may draw blood at the request and in the*
29 *presence of a peace officer for purposes of alcohol or drug testing*
30 ~~pursuant to Section 23158 of the Vehicle Code~~ *forensic purposes*
31 *in any location and without direct supervision.*

32 (d) Notwithstanding subdivisions (a) and (b), a ~~certified~~
33 ~~phlebotomy technician~~ *person who has been issued a "certified*
34 *phlebotomy technician" certificate pursuant to this section may*
35 *draw blood at the request of an employer, in any location and*
36 *without direct supervision, for legally mandated occupational*
37 *monitoring and testing programs.*

38 (e) The department may adopt regulations providing for the
39 issuance of a certificate to an unlicensed person employed by a

1 clinical laboratory authorizing only the performance of skin
2 punctures for test purposes.

3 SEC. 2. Section 23158 of the Vehicle Code is amended to
4 read:

5 23158. (a) ~~Only~~ *Notwithstanding any other provision of law,*
6 *only* a licensed physician and surgeon, registered nurse, licensed
7 vocational nurse, duly licensed clinical laboratory ~~technologist or~~
8 ~~clinical laboratory bioanalyst, unlicensed laboratory personnel or~~
9 ~~certified phlebotomy technician regulated pursuant to Sections~~
10 ~~1242, 1242.5, and 1246 of the Business and Professions Code, or~~ *scientist or clinical*
11 *laboratory bioanalyst, a person who has been issued a “certified*
12 *phlebotomy technician” certificate pursuant to Section 1246 of the*
13 *Business and Professions Code or who has training, knowledge,*
14 *and proficiency in venipuncture sufficient to be an “unlicensed*
15 *person” authorized to perform clinical laboratory phlebotomy*
16 *under subdivision (a) of Section 1246 of the Business and*
17 *Professions Code, or certified paramedic acting at the request of*
18 *a peace officer may withdraw blood for the purpose of determining*
19 *the alcoholic content therein. This limitation does not apply to the*
20 *taking of breath specimens. An emergency call for paramedic*
21 *services takes precedence over a peace officer’s request for a*
22 *paramedic to withdraw blood for determining its alcoholic*
23 *content. A certified paramedic shall not withdraw blood for this*
24 *purpose unless authorized by his or her employer to do so.*

25 (b) The person tested may, at his or her own expense, have a
26 licensed physician and surgeon, registered nurse, licensed
27 vocational nurse, duly licensed clinical laboratory ~~technologist or~~
28 ~~clinical laboratory bioanalyst, unlicensed laboratory personnel or~~
29 ~~certified phlebotomy technician regulated pursuant to Sections~~
30 ~~1242, 1242.5, and 1246 of the Business and Professions Code, or~~
31 *scientist or clinical laboratory bioanalyst, a person who has been*
32 *issued a “certified phlebotomy technician” certificate pursuant to*
33 *Section 1246 of the Business and Professions Code or who has*
34 *training, knowledge, and proficiency in venipuncture sufficient to*
35 *be an “unlicensed person” authorized to perform clinical*
36 *laboratory phlebotomy under subdivision (a) of Section 1246 of*
37 *the Business and Professions Code, or any other person of his or*
38 *her own choosing administer a test in addition to any test*
39 *administered at the direction of a peace officer for the purpose of*
40 *determining the amount of alcohol in the person’s blood at the time*

1 alleged as shown by chemical analysis of his or her blood, breath,
2 or urine. The failure or inability to obtain an additional test by a
3 person does not preclude the admissibility in evidence of the test
4 taken at the direction of a peace officer.

5 (c) Upon the request of the person tested, full information
6 concerning the test taken at the direction of the peace officer shall
7 be made available to the person or the person's attorney.

8 (d) Notwithstanding any other provision of law, no licensed
9 physician and surgeon, registered nurse, licensed vocational nurse,
10 duly licensed clinical laboratory ~~technologist or clinical~~
11 ~~laboratory bioanalyst, unlicensed laboratory personnel or certified~~
12 ~~phlebotomy technician regulated pursuant to Sections 1242,~~
13 ~~1242.5, and 1246 of the Business and Professions Code, or~~
14 *scientist or clinical laboratory bioanalyst, a person who has been*
15 *issued a "certified phlebotomy technician" certificate pursuant to*
16 *Section 1246 of the Business and Professions Code or who has*
17 *training, knowledge, and proficiency in venipuncture sufficient to*
18 *be an "unlicensed person" authorized to perform clinical*
19 *laboratory phlebotomy under subdivision (a) of Section 1246 of*
20 *the Business and Professions Code, or certified paramedic, or*
21 *hospital, laboratory, agency, or clinic employing or utilizing the*
22 *services of the licensed physician and surgeon, registered nurse,*
23 *licensed vocational nurse, duly licensed laboratory technologist or*
24 *clinical laboratory bioanalyst, unlicensed laboratory personnel or*
25 *certified phlebotomy technician regulated pursuant to Sections*
26 *1242, 1242.5, and 1246 clinical laboratory scientist or clinical*
27 *laboratory bioanalyst, a person who has been issued a "certified*
28 *phlebotomy technician" certificate pursuant to Section 1246 of the*
29 *Business and Professions Code or who has training, knowledge,*
30 *and proficiency in venipuncture sufficient to be an "unlicensed*
31 *person" authorized to perform clinical laboratory phlebotomy*
32 *under subdivision (a) of Section 1246 of the Business and*
33 *Professions Code, or certified paramedic, owning or leasing the*
34 *premises on which tests are performed, shall incur any civil or*
35 *criminal liability as a result of the administering of a blood test in*
36 *a reasonable manner in a hospital, medical laboratory, or medical*
37 *clinic environment, according to accepted medical venipuncture*
38 *practices, without violence by the person administering the test,*
39 *and when requested in writing by a peace officer to administer the*
40 *test.*

1 (e) *Notwithstanding any other provision of law, a person*
2 *authorized by this section to draw blood at the request and in the*
3 *presence of a peace officer for purposes of determining its*
4 *alcoholic content, may do so in any location and without*
5 *supervision.*

6 (f) If the test given under Section 23612 is a chemical test of
7 urine, the person tested shall be given such privacy in the taking
8 of the urine specimen as will ensure the accuracy of the specimen
9 and, at the same time, maintain the dignity of the individual
10 involved.

11 ~~(f)~~

12 (g) The department, in cooperation with the State Department
13 of Health Services or any other appropriate agency, shall adopt
14 uniform standards for the withdrawal, handling, and preservation
15 of blood samples prior to analysis.

16 ~~(g)~~

17 (h) As used in this section, “certified paramedic” does not
18 include any employee of a fire department.

19 ~~(h)~~

20 (i) Consent, waiver of liability, or the offering to, acceptance
21 by, or refusal of consent or waiver of liability by the person on
22 whom a test is administered, is not an issue or relevant to the
23 immunity from liability ~~for medical personnel or the medical~~
24 ~~facility~~ under subdivision (d).

